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The illicit trade in small arms and light weapons in all its aspects

Note by the Secretary-General

By its resolution 60/81 of 8 December 2005, the General Assembly decided to establish a group of governmental experts, appointed by the Secretary-General on the basis of equitable geographical representation, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and requested the Secretary-General to submit the report on the outcome of its study to the General Assembly at its sixty-second session. The Secretary-General has the honour to submit to the Assembly the report of the above-mentioned Group.

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Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons

Summary

The present report highlights that illicit brokering activities in small arms and light weapons, which are typically conducted through intricate arrangements involving complex transportation routes and opaque financial transfers, have a profound destabilizing effect and have been an important factor in violations of arms embargoes imposed by the United Nations Security Council. It emphasizes that the globalized nature of the environment in which arms brokering activities take place necessitates the development of a holistic approach to illicit brokering in all its aspects.

The report presents an overview of recent efforts in preventing, combating and eradicating illicit brokering in small arms and light weapons and notes that approximately 40 States have enacted national regulations to control arms brokering transactions. Furthermore, it offers the first internationally agreed description of what constitutes brokering in small arms and light weapons and its closely associated activities as well as optional elements which States may wish to consider when developing or improving national small arms and light weapons brokering controls.

The report concludes with recommendations aimed at enhancing international cooperation to prevent, combat and eradicate illicit brokering in small arms and light weapons and practical steps for the implementation thereof.

Foreword by the Secretary-General

Illicit brokering in small arms and light weapons continues to fuel the illicit trade in those weapons and is largely responsible for violations of arms embargoes imposed by the United Nations Security Council. Those activities facilitated the flow of illicit small arms and light weapons into conflict areas and into the hands of criminal and terrorist groups, with grave consequences for international peace and security, economic and social development and the safety of civilians.

When States agreed on the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action), they also made a commitment to developing adequate national legislation or administrative procedures to regulate small arms and light weapons brokering, and to forging common understanding of the basic issues and the scope of the problems related to such activities. I am thus pleased to note that the Group of Governmental Experts was able to reach consensus on the complex but fundamental issue of a description of what constitutes illicit brokering in small arms and light weapons and on a set of elements that could serve as the basis for the development of effective national systems to regulate and control such activities. This is an important step towards the goal of preventing, combating and eradicating illicit brokering activities.

While States bear the primary responsibility for combating illicit brokering in small arms and light weapons, the transnational nature of this problem also calls for vigorous action at the regional and global levels. Those engaged in illicit brokering are known for their ability to move easily from one country to another and operate through intricate international arrangements, which makes it difficult to trace their activities and collect evidence to support the efforts of law enforcement institutions tasked with investigating such activities. Hence, I attach great importance to the fact that the present report contains concrete recommendations for effective international cooperation to curb illicit brokering in small arms and light weapons, namely through the provision of assistance for capacity-building; enhanced information-sharing among States; and mutual assistance arrangements for the identification, investigation and prosecution of illicit brokers.

The work of this Group lays a solid foundation for the tasks ahead and its positive outcome is a clear indication that there is a will to address the problem of illicit brokering in small arms and light weapons in a collective and responsible manner. I encourage the General Assembly to endorse the present report and to take appropriate actions to support the full implementation of the recommendations contained therein. I thank and congratulate the Group of Governmental Experts for this valuable contribution to the further implementation of the Programme of Action.

Letter of transmittal dated 13 July 2007 from the Chairperson of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons addressed to the Secretary-General

In the 2005 motion picture *Lord of War*, Nicolas Cage plays the role of an unscrupulous arms broker who at one instance remarks: "If I do my job right, an arms embargo should be practically impossible to enforce".

It is a cynical but convincing illustration of the growing problem of illicit brokering in small arms and light weapons. Operating in a particularly globalized environment, illicit brokers — who, contrary to traders, often do not own the goods they deal in — capitalize on the increased opportunities in international transportation, finances and communications.

Research has shown that brokers play a critical role in the illicit trade of small arms and light weapons and the widespread availability of these weapons. This, in turn, facilitates violations of international humanitarian law, perpetuates civilian suffering, impedes assistance for victims, increases the lethal effects and duration of conflicts, and hampers the delivery of humanitarian assistance, reconstruction and reconciliation.

States have recognized the problem of illicit brokering in small arms and light weapons and have begun to address it in the 2001 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. They have committed themselves to developing national regulations on the issue, as it is generally recognized that national brokering controls are an essential first step for preventing illicit brokering activities. In my opinion, however, the Programme of Action, for all its importance as a norm-setting document, could be stronger on implementation.

As a follow-up to the Programme of Action, the Group of Governmental Experts which I had the honour to chair was tasked to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons. The present report is the result of its work.

The Group has deemed it important to include specific suggestions on how to bring about the existing commitment by States to develop national brokering controls, apart from recommendations on further steps for international cooperation. Therefore, the report carries an agreed description of the subject, including closely associated activities. This description is important for lawmakers who want to frame this elusive issue. Furthermore, it offers optional elements which States may wish to make use of when developing national regulation on arms brokering. These elements could constitute a practical tool for implementation at the national level.

The report argues strongly for intensifying international cooperation in tackling illicit brokering in small arms and light weapons, both regarding the exchange of evidentiary information and assistance for capacity-building. Its recommendations include practical ways to bring about such cooperation.

I trust that States will see the present set of mutually reinforcing measures as the basis for a concerted and structured attention to this issue at the national, regional and global levels. In particular, at the global level, it is mainly a matter of process management: streamlining voluntary reporting, encouraging needs assessments which can be integrated into national small arms and light weapons action plans, developing the clearinghouse function of the United Nations, and regular consideration of national reporting can all be organized if States wish to do so.

Through you I would like to thank the members of the Group for their very constructive approach and their essential contributions to its outcome. The present report has truly been a group product.

On behalf of the Group, I would like to express appreciation for the excellent support that it received from the United Nations Secretariat. The Group wishes to thank the Director for Disarmament Affairs for her support throughout its work. Special appreciation also goes to the Secretary of the Group, António Évora; the other research and administrative staff of the Department for Disarmament Affairs; and to Brian Wood, who served as a knowledgeable and dependable consultant to the Group.

The Group has requested me to submit to you on its behalf the present report, which was unanimously approved.

(*Signed*) Daniël **Prins**
Chairperson of the Group of Governmental Experts
established pursuant to General Assembly resolution
60/81 to consider further steps to enhance international
cooperation in preventing, combating and eradicating
illicit brokering in small arms and light weapons

Contents

		Paragraphs	*Page*
I.	The problem of illicit brokering in small arms and light weapons	1–13	7
II.	Recent efforts in preventing, combating and eradicating illicit brokering in small arms and light weapons	14–34	9
III.	Elements of existing national legislation and regulation systems to prevent, combat and eradicate illicit brokering activities in small arms and light weapons	35–50	13
IV.	Further steps to enhance international cooperation to prevent, combat and eradicate illicit brokering in small arms and light weapons	51–62	16
V.	Recommendations	63	18
VI.	Procedural matters	64–68	21
Annex			
	Existing regional and multilateral instruments and arrangements enhancing international cooperation to prevent, combat and eradicate the illicit brokering in small arms and light weapons		25

I. The problem of illicit brokering in small arms and light weapons

A. Introduction

1. Member States have increasingly expressed concern about the adverse consequences resulting from the unregulated nature of activities of brokers in small arms and light weapons[1] who operate across national boundaries and jurisdictions. Most brokers, dealers and shippers seek to act within the law, but in many countries laws on arms brokering do not exist or are not well defined. Unregulated and poorly regulated arms brokering activities may result in small arms and light weapons transactions that increase the risk that arms are diverted to conflict-prone areas and embargoed entities, as well as to organized criminal and terrorist groups.

2. The United Nations reports issued between 1996 and 1998 on arms flows to the perpetrators of the Rwanda genocide showed for the first time in United Nations documents how illicit brokering in small arms and light weapons comprised intricate arrangements involving corrupt State officials, complex transportation routes and opaque financial transfers through offshore banking and shell companies.[2] Analyses of such activities revealed that illicit brokers typically conduct their business by exploiting legal loopholes, evading customs and airport controls, and falsifying documents such as passports, end-user certificates and cargo papers. Subsequent investigations of arms embargo violations relating to Angola,[3] the Côte d'Ivoire,[4] the Democratic Republic of the Congo,[5] Liberia,[6] Sierra Leone,[7] Somalia,[8] and the Sudan[9] have exposed international networks involved in the illicit brokering of small arms and light weapons.

3. Insofar as arms brokering activities are effectively regulated and controlled, arms brokers can perform a legitimate function. Illicit brokering in small arms and light weapons can have, however, a detrimental effect on national, regional and international stability and security, conflict prevention and resolution, crime

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[1] For a description of small arms and light weapons, see earlier relevant United Nations reports and documents.

[2] See Security Council resolutions 918 (1994), 997 (1995), 1011 (1995) and 1749 (2007). On the International Commission of Inquiry, see resolutions 1013 (1995), 1053 (1996), 1161 (1998); and documents S/1996/67, S/1996/195, S/1997/1010, S/1998/63 and S/1998/1096.

[3] See Security Council resolutions 864 (1993), 1237 (1999), 1295 (2000), 1439 (2002); and documents S/2000/203, S/2000/1225, S/2001/363, S/2001/966, S/2002/486, S/2002/1119 and S/2002/1339.

[4] See Security Council resolutions 1572 (2004), 1584 (2005), 1609 (2005), 1643 (2005); 1727 (2006); and documents S/2005/699, S/2006/735 and S/2006/964.

[5] See Security Council resolutions 1493 (2003), 1533 (2004), 1596 (2005), 1649 (2005); and documents S/2004/551, S/2005/30, S/2005/436, S/2006/53 S/2006/525 and S/2007/40.

[6] See Security Council resolutions 788 (1992), 1343 (2001), 1521 (2003); and documents S/2001/1015, S/2002/1115.

[7] See Security Council resolutions 1132 (1997), 1171 (1998); and document S/2000/1195.

[8] See Security Council resolutions 733 (1992), 751 (1992), 1356 (2001), 1407 (2002), 1425 (2002), 1474 (2003), 1519 (2003), 1558 (2004), 1587 (2005), 1630 (2005), 1676 (2006), 1724 (2006), 1725 (2006), 1744 (2007); and documents S/2003/223, S/2003/1035, S/2004/604, S/2005/153, S/2005/625, S/2006/229 and S/2006/913.

[9] See Security Council resolutions 1556 (2004), 1591 (2005), 1651 (2005), 1665 (2006), 1672 (2006), 1679 (2006), 1713 (2006); and documents S/2006/65, S/2006/250, and S/2006/795.

prevention, humanitarian, health and development issues. Consequently, States should consider steps to be taken at the national, regional and international level to prevent, combat and eradicate the activities of those involved in the illicit brokering of small arms and light weapons.

4. In the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action) States undertook to "develop adequate legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering" and to develop, at the global level, "common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons, with a view to preventing, combating and eradicating the activities of those engaged in such brokering".[10]

5. Although there are a number of regional and subregional instruments covering small arms and light weapons brokering, most States have not yet developed adequate legislation or administrative procedures to regulate such brokering. Among the reasons for this are low political prioritization, limited coordinated efforts to reach common understandings about the issue, and the lack of dedicated resources.

6. The Group noted that combating illicit brokering in small arms and light weapons is primarily the responsibility of States, which choose the appropriate national controls and measures to ensure compliance. It also noted that the globalized nature of the environment in which arms brokering activities take place necessitates the development of a holistic approach to illicit brokering in all its aspects.

7. The Group noted that relevant national laws, where they do exist, usually cover brokering in small arms and light weapons as part of the regulation of conventional weapons. Consequently, in addressing the problem of illicit brokering, the Group occasionally needed to refer to "arms brokering" rather than "brokering in small arms and light weapons" specifically. It should be understood, however, that the focus of the work of the report of the Group is the latter and that any reference to arms brokers or brokering activities is aimed only to situate the discussion on illicit brokering in small arms and light weapons.

B. Illicit brokering in all its aspects

Brokering

8. A broker in small arms and light weapons can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.

9. Within the context of these intermediary activities involving small arms and light weapons, a broker might:

(a) Serve as a finder of business opportunities to one or more parties;

[10] *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001* (A/CONF.192/15), chap. IV, sect. II, paras. 14 and 39.

(b) Put relevant parties in contact;

(c) Assist parties in proposing, arranging or facilitating agreements or possible contracts between them;

(d) Assist parties in obtaining the necessary documentation;

(e) Assist parties in arranging the necessary payments.

10. Some activities closely associated with brokering in small arms and light weapons that do not necessarily in themselves constitute brokering might be undertaken by brokers as part of the process of putting a deal together to gain a benefit. These activities may include, for example, acting as dealers or agents in small arms and light weapons, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.

11. Brokering activities can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of the small arms and light weapons.

Illicit brokering

12. The illicit nature of brokering in small arms and light weapons is determined by the State concerned in accordance with its national laws and regulations, as well as in accordance with the State's international obligations.

13. The illicit or licit nature of closely associated activities as referred to in paragraph 10 above, whether or not undertaken by a broker, may also be determined on the basis of other national laws and regulations.

II. Recent efforts in preventing, combating and eradicating illicit brokering in small arms and light weapons

A. National steps

14. By mid-2007 about 40 States had enacted national laws, regulations and procedures that enable various forms of control of arms brokering, including of small arms and light weapons brokering transactions.[11] The control of brokering in small arms and light weapons is usually dealt with as part of broader legislation on arms brokering, arms transfers, financial transactions and related commercial trade issues. In some national systems of control, the term "brokering" is not explicitly used, but the brokering activity is nevertheless covered by the interpretation of these laws. The essential features of national legislation and regulations of some States are described in section III below.

[11] Silvia Cattaneo, "National Systems of Licensing and Registration" in *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons -- Scope and Implications*, United Nations Institute for Disarmament Research, United Nations Office for Disarmament Affairs, Small Arms Survey, 2006 (United Nations publication, Sales No. 6V.E.06.0.17).

15. National legal systems differ in how they define and regulate brokering activities. Some national legal systems refer to intermediation between relevant parties, putting relevant parties in contact, as well as arranging payment or transportation necessary for the transfer of a consignment of arms. National legal systems vary in the way they refer to activities that are closely related to brokering in small arms and light weapons, such as the actual provision or brokering of arms transportation and financing, particularly when these closely associated activities are an integral part of the brokered transaction. Negotiating and trading in small arms and light weapons as an intermediary may be part of the same legal definition as that covering brokering in small arms and light weapons, in recognition of the fact that the same actors may carry out all such functions.

B. Regional steps

16. A significant degree of convergence has emerged in recent years regarding key elements of regulating arms brokering as shown in a number of regional, subregional and other multilateral instruments (see annex to the present report for the current list of such instruments). The measures taken at the regional level on preventing, combating and eradicating illicit brokering in small arms and light weapons have been important from a norm-setting perspective. Implementation of these norms in national laws and regulations often remains a challenge, however. Measuring progress in the implementation of such regional instruments might be possible if follow-up procedures are also agreed and implemented.

17. In Africa, a general commitment to control the brokering of small arms and light weapons has been made by all member States of the African Union. Legally binding commitments have also been made at subregional level by the States of East Africa, the Great Lakes and the Horn of Africa (the Nairobi Group), the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS).

18. The Organization of American States (OAS) adopted the Inter-American Drug Abuse Control Commission Model Regulations for the Control of Brokers of Firearms, Their Parts, Components and Ammunition. States in the Andean region adopted the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

19. Standards for the control of arms brokering were agreed upon by the Organization for Security Cooperation in Europe (OSCE) and by the European Union.

20. Within the Asia-Pacific Economic Cooperation (APEC), States agreed to ban the use of brokers and brokering services not authorized by Governments for transfers of certain types of small arms and light weapons. An explicit reference was made by the Association of Southeast Asian Nations to prevent arms smuggling as part of transnational crime.

21. The Wassenaar Arrangement, a multilateral initiative, agreed a set of common Elements for Effective Legislation on Arms Brokering, which covers the brokering of international transfers of all conventional arms.

C. Global steps

22. The United Nations Disarmament Commission in 1996 agreed on the Guidelines for international arms transfers, according to which "States should maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking".[12] This was the first time that an agreed-upon United Nations document referred to the need to regulate the activities of private arms dealers.

23. Both the 1997 report of the Panel of Governmental Experts on Small Arms (A/52/298) and the 1999 report of the Group of Governmental Experts on Small Arms (A/54/258) identified the role played by arms dealers and brokers, transportation agents and financial institutions in smuggling, concealment, mislabelling and false documentation of arms transfers. They also noted that negligent or corrupt government officials sometimes aided and abetted illicit arms trafficking. The 2001 report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V (A/CONF.192/2), on the feasibility of restricting the manufacture and trade of small arms and light weapons to manufacturers and dealers authorized by States, suggested that States should implement and develop national regulations and controls; identify good practices and develop common approaches or agreed minimum standards; and make resources available nationally and through appropriate programmes for international cooperation and assistance.

24. The Programme of Action, on which recommendation the General Assembly based the mandate of this Group, forms a comprehensive framework for action at the national, regional and global levels, against the illicit trade in small arms and light weapons, including illicit brokering in small arms and light weapons. The Programme of Action is unequivocal about the critical need to combat such brokering, as an essential aspect of the efforts to curb the illicit trade in small arms and light weapons.

25. Reporting on the implementation of the Programme of Action, including measures addressing illicit brokering in small arms and light weapons, is voluntary. One hundred thirty-seven States have submitted at least one national report. More than half of States which have submitted reports have addressed the issue of illicit brokering in small arms and light weapons in all its aspects.[13]

26. The United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/255, annex), in its article 15 (1) suggests one or more measures that could be included in a system for regulating the brokering of firearms, their parts and components and ammunition, such as: (a) requiring registration of brokers operating within their territory; (b) requiring licensing or authorization of brokering; or (c) requiring disclosure on import and

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[12] See *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42* (A/51/42), annex I, para. 39.

[13] Information in this paragraph comes from E. Kytömäki and V. Yankey-Wayne, *Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports* (United Nations publication, Sales No. GV.E.06.0.8) (UNIDIR/2006/6).

export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

27. In a statement by its President of 31 October 2002 (S/PRST/2002/30), the Security Council stressed the importance of further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons and called upon States that had not already done so to establish, where applicable, a national register of arms brokers and, in the case of the supply of arms to embargoed destinations, of intermediary firms, including transport agents. The Council also urged States to impose appropriate penalties for all illicit brokering activities, as well as arms transfers that violate Security Council embargoes, and to take appropriate enforcement action.

28. The investigative teams (panels, mechanisms and groups) of the United Nations sanctions committees established by the Security Council have consistently identified in their reports violations of United Nations arms embargoes. Their reports show that the challenges to effective international cooperation in preventing and combating illicit arms brokering are mainly in the field of cooperation and information exchange between Member States and between them and international organizations.

29. The recent inclusion of arms embargoes monitoring functions in the mandate of United Nations peacekeeping operations represents an additional advancement in the prevention, combat and eradication of illicit brokering in small arms and light weapons.

30. Both the International Criminal Police Organization (Interpol) and the World Customs Organization (WCO) have undertaken steps to counter illicit trafficking in arms, including illicit brokering.

31. Interpol has developed its "I-24/7" global police communications system. This global network for the exchange of police information provides law enforcement authorities in its member countries with instant access to the organization's databases. It also enables national authorities to access each others' national databases through designated officials, while always remaining in control of their own national criminal data. If they so choose, national authorities in member countries can extend I-24/7 access to authorized entities such as border control units or customs officials.

32. Moreover, Interpol is setting up an information system to help national law enforcement agencies track illicit movements and uses of firearms. This system can be complemented with the Interpol system of international Notices (alerts) to assist national law enforcement agencies. Queries by national police may be linked to other criminal records, for example, records related to international organized crime, terrorism and money-laundering, which could help in combating the illicit brokering of small arms and light weapons.

33. The Customs Cooperation Council of WCO recommended in 2002 that States and customs authorities "consider designating specific offices/sites for the processing of legitimate firearms shipments in order to enhance control over their

transborder movement."[14] WCO has since set up a comprehensive approach to customs capacity-building with its programme to assist member countries with implementing the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade.[15] This programme will be important for enhancing capacity of relevant national authorities to prevent, combat and eradicate illicit brokering in small arms and light weapons.

34. In addition, the International Civil Aviation Organization and the International Maritime Organization, as well as non-governmental industry associations such as the International Air Transport Association, have set out and regularly updated standards for the transport of dangerous cargoes and for the conduct of their members. The enforcement of such standards by national authorities may be important for the prevention and suppression of illicit brokering in small arms and light weapons.

III. Elements of existing national legislation and regulation systems to prevent, combat and eradicate illicit brokering activities in small arms and light weapons

35. The United Nations Programme of Action recommends States to "develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering" (see para. 4 above). The present section offers recurring elements drawn from existing national legislation and regulation systems of some States to prevent, combat and eradicate illicit brokering activities in small arms and light weapons.

Definition of broker and brokering activities

36. National legislation applicable to the brokering of transactions in small arms and light weapons normally includes a definition of "broker" and/or what constitutes "brokering activities". In addition, some other national legislation might also contain definitions relevant for brokering activities (see para. 10 above).

Registration and screening potential brokers

37. Some States limit the number of small arms and light weapons brokers and may restrict it to one or more State-controlled entities, while others allow applications from private individuals and/or entities. Some national systems may impose a general registration requirement on brokers as a precondition to receiving a license or authorization to engage in specific brokering activities, thus establishing a level of screening that precedes, and is additional to, the licensing or authorization process.

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[14] See Recommendation of the Customs Cooperation Council concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 29 June 2002.

[15] World Customs Organization, *Framework of Standards to Secure and Facilitate Global Trade* (Brussels, June 2005).

38. The registration and screening of a prospective broker in small arms and light weapons by the regulatory authorities may include the submission of information inter alia on:

(a) The broker's country of residence and citizenship;

(b) The broker's ownership of any entity or involvement in relevant businesses that may be used to facilitate brokering activity;

(c) The range of small arms and light weapons that the broker may wish to be involved in brokering.

39. Such screening by the State may also include a range of official checks of the information provided by the potential broker. These checks could include reviewing whether a proposed broker has been indicted or convicted of crimes subject to national discretion.

Record-keeping by Governments

40. Governments generally keep data regarding persons or entities having obtained a license to perform brokering activities and transactions for the duration that they deem necessary. In most States records on granted/refused licences are shared among national agencies involved in the licensing enforcement and record-keeping processes, as applicable to national regulations.

Record-keeping by brokers

41. Brokers are usually required to keep adequate records for a specific length of time of their brokering activities, including commercial and official documents on brokered transactions and transfers in small arms and light weapons in which they have been authorized to engage. In addition, they may be required to submit periodically specific reports on their arms brokering activities to national authorities. National practices vary with respect to how long these records should be kept. Some national systems require that brokers who go out of business forward their records pertaining to their brokering activities to the Government in accordance with its national legislation.

Licensing

42. The use of the terms license, authorization or permit may vary according to national regulations, but essentially for the purpose of this report these terms refer to the same practice.

43. An application for a license to broker may include one brokering activity or a series of brokering activities. Such license applications are considered for approval by competent authorities on a case-by-case basis.

44. Alternative means of providing authorizations to brokers may also be considered, such as the exceptional use of exemptions that would be included in the regulations. Such exemptions may cover the activities of armed and police forces or other governmental officials.

Licensing criteria

45. States that have criteria for deciding whether to grant a small arms and light weapons brokering license have generally based them on their existing national law and on international commitments of the State regarding the control of international arms transfers. States often apply the same general criteria used for arms export control to the authorization of brokering activities.

Brokering and closely related activities

46. National provisions may also include the control of financial, transport and other services when these are arranged or facilitated by a broker as an integral part of a small arms and light weapons transaction designed to benefit the broker.

Jurisdiction

47. National legislation allows a State to exercise jurisdiction over individuals and entities brokering small arms and light weapons transactions from its own territory. Some States have explicit provisions expanding jurisdiction to cover their nationals, permanent residents and companies when they conduct arms brokering activity abroad, while others do not.

Penalties and fines

48. The penalties and fines that States can impose for the violation of brokering laws and regulations vary between States. National penalties may include imprisonment, the imposition of a monetary fine, or losing the privilege to engage in brokering activities, export activities or even bidding on government contracts. Some States publish information on convictions and debarments. In some States, sanctions applied to illicit trade activities are the same as those applied to illicit brokering activities.

49. Some States enforce the provisions of United Nations mandatory arms embargoes through specific legislation enabling them to pursue cases of illicit small arms and light weapons brokering involved in the violation of such sanctions. Some national laws and regulations make those who carry out such illicit brokering activities subject to more severe penalties.

International cooperation

50. Arms brokering frequently involves the conduct of activities in more than one country, and therefore may require cooperation among regulatory and law enforcement authorities. National legislation may contain provisions to guide relevant authorities when they share evidentiary information for law enforcement and prosecution purposes and when they assist other national authorities to determine the eligibility of a broker or the legitimacy of a potential brokering activity. States share information through official government channels on the basis of supporting agreements, such as mutual legal assistance treaties.

IV. Further steps to enhance international cooperation to prevent, combat and eradicate illicit brokering in small arms and light weapons

51. Further steps to enhance international cooperation to prevent, combat and eradicate illicit brokering in small arms and light weapons should serve to reduce such brokering through, inter alia, the establishment of national laws and regulations where they do not exist, the improvement of existing national laws and regulations, increased enforcement efforts, and enhanced regional and international cooperation. Such laws and regulations, accompanied by enforcement actions, can have a strong deterrent effect on illicit brokering activities. Measures at the regional and global level could complement national action.

52. As illicit arms brokering is profoundly globalized in character, it cannot effectively be prevented solely through the adoption of national laws and regulations alone. That is why States have endeavoured to cooperate internationally, at the regional and global level. The challenge is to effectively and comprehensively organize action through existing structures and processes, under which national, regional and global measures become mutually enhancing. To this end, States may be guided by their commitment, as stated in section III, paragraph 2, of the Programme of Action, that "States undertake to cooperate and to ensure coordination, complementarity and synergy in efforts to deal with the illicit trade in small arms and light weapons in all its aspects".

A. Adequate national legislation or administrative procedures

53. National controls on brokering are most effective when they form part of a comprehensive export control system. A set of elements that some States have considered in developing their laws and regulations is included in section III above. States and regional organizations may choose to see these as optional elements in developing their national laws and regulations or regional instruments, taking into consideration their specific situations and needs.

54. To complement the introduction of laws and regulations, it is necessary to ensure that there is sufficient capacity to enforce measures effectively. Also, with the introduction of proportionate and dissuasive penalties for offences, it is necessary to ensure that all agencies involved in national control of small arms and light weapons are able to communicate effectively with each other.

B. International cooperation on sharing of information

55. Information sharing among States can take place bilaterally and on a multilateral basis as appropriate. States can share information about the design and practices used in national systems of control. The sharing of information on the authenticity of the documents submitted as part of a license application, and the cross-checking of this information on a case-by-case basis, would assist the prevention and combating of illicit brokering activities. Such information sharing could include cooperation to facilitate the authentication of end-user certificates provided by a broker if applicable.

56. Judicial cooperation among States could allow the prosecuting authorities of a country to obtain the necessary evidence to bring to court an investigated brokering case. Exchanges of information, directly or through Interpol, could be instrumental in earlier stages of evidence gathering for purposes of investigation and prosecution. National points of contact would greatly facilitate such exchange of information. Bilateral mutual legal assistance agreements are essential for effective cooperation between judicial authorities of States, as are the relevant multilateral instruments for international legal cooperation to which States are parties.

C. International assistance and capacity-building

57. Requests for assistance to build capacity to prevent, combat and eradicate illicit brokering should be based on a thorough assessment of the situation in order to determine the specific needs to be targeted. For example, it should be determined whether assistance is needed to develop or review national legislation and procedures; to strengthen national licensing control systems; to enhance the capacity of law enforcement agencies; or other needs. States in a position to do so and appropriate international and regional organizations should, upon request and as appropriate, assist in the formulation of assistance and capacity-building programmes. A national action plan on small arms and light weapons, including on brokering controls, would greatly facilitate effective arrangements for assistance and cooperation. The United Nations could help to facilitate that assistance is provided in a coordinated and synergistic manner, in order to minimize duplication of assistance efforts.

D. Promoting effective reporting

58. Voluntary national reporting under the Programme of Action could include reporting on national measures to prevent, combat and eradicate illicit brokering in small arms and light weapons, on the sharing of information on brokering, and on the needs for international cooperation and assistance for capacity-building. This could be accomplished by dedicating a specific section of the national reports on the implementation of the Programme of Action to the issue of brokering. Such reporting would provide an important vehicle for awareness-raising and for action at the national, regional and global levels.

59. The information-sharing potential of such reporting could be better harnessed if it were subject to structured consideration by States in meetings at the global level. This could be accomplished in the context of the meetings to consider the implementation of the Programme of Action.

E. Enhancing international cooperation on preventing, combating and eradicating illicit brokering of small arms and light weapons in violation of United Nations Security Council arms embargoes and sanctions

60. Given the persistent violation of United Nations arms embargoes by international trafficking networks involving illicit small arms and light weapons brokering activities, as reported by United Nations investigative teams to the

sanctions committees of the Security Council, States are encouraged to cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations.

61. The nature of illicit small arms and light weapons brokering activities is a reason for enhancing national implementation, where appropriate, to support Security Council arms embargoes.

62. Improving the ability of United Nations peacekeeping operations, where appropriate, would further help prevent and combat illicit arms brokering activities that contribute to the violation of Security Council arms embargoes.

V. Recommendations

63. The following recommendations are intended to form a mutually reinforcing set of measures which could be undertaken at the national, regional and global levels for the purpose of preventing, combating and eradicating illicit brokering in small arms and light weapons:

National implementation of legislation and administrative procedures

(i) States which have not already done so are encouraged to develop adequate national laws, regulations and administrative procedures to control small arms and light weapons brokering activities. Such laws, regulations and administrative procedures would be more effective if they were integrated into national export control systems;

(ii) When establishing or improving their legislation or administrative procedures, where appropriate, and regulating the activities of those who engage in small arms and light weapons brokering, States may wish to make use of the optional elements in section III of the present report, depending on the need defined by them;

(iii) Given that brokers in small arms and light weapons may engage in closely associated activities referred to in paragraph 10 of the present report, States are encouraged to ensure that such closely associated activities are adequately regulated by law, in cases of illicit brokering in small arms and light weapons involving in particular violations of United Nations Security Council arms embargoes;

(iv) International, regional, and subregional organizations are encouraged to organize training courses and workshops for national experts and relevant law enforcement officials to share information on lessons learned and practices regarding national arms brokering legislation and enforcement. For this purpose, States and appropriate international and regional organizations in a position to do so should seriously consider rendering assistance;

(v) States are encouraged to put in place measures aimed at preventing the forgery and misuse of end-user certificates or other documents which might be relevant for the conduct of brokering activities;

(vi) States are encouraged to put in place internal measures as appropriate for validating the authenticity of documentation submitted by the broker, such as import license or end-user certificates and/or letters of credit;

International cooperation on sharing of information

(vii) The information sought or provided in the context of a request for cooperation to prevent, combat and eradicate illicit brokering in small arms and light weapons should be requested with due respect for the State's constitutional and legal system. Information provided could be limited by national laws on protection of personal data, States' security considerations, and commercial confidentiality;

(viii) States are encouraged to voluntarily cooperate with other States with a view to facilitating national decision-making and national cross-checking procedures, including the validation of relevant documents for screening the legitimacy of all parties involved in a proposed small arms and light weapons brokering activity;

(ix) In order to facilitate international cooperation, States are encouraged to designate a national point of contact on brokering in small arms and light weapons, which could be the national points of contact under the Programme of Action. The United Nations Office for Disarmament Affairs could facilitate communication between national points of contact;

(x) States are encouraged to voluntarily cooperate with other States in law enforcement efforts to investigate illicit brokering activities in small arms and light weapons;

(xi) States are encouraged to voluntarily engage in or strengthen bilateral or, where appropriate, multilateral cooperation pertaining to the investigation and prosecution of an individual or a legal entity allegedly involved in illicit brokering in small arms and light weapons;

(xii) If required, States are encouraged to voluntarily cooperate in law enforcement and to conclude bilateral mutual arrangements for the sharing of evidentiary information on illicit brokering in small arms and light weapons. Such cooperation could be conducted through national points of contact as appropriate, or as identified in mutual agreements or otherwise;

(xiii) States are encouraged to share information about systems of brokering control and on how to maintain and operate such systems to enhance bilateral and multilateral understanding in order to prevent, combat and eradicate illicit brokering in small arms and light weapons;

International assistance and capacity-building

(xiv) States and relevant international, regional and subregional organizations in a position to do so should, upon request, seriously consider rendering technical, legal, financial and other support to interested States to reinforce national measures to prevent, combat and eradicate the illicit brokering in small arms and light weapons in all its aspects;

(xv) States may request assistance in relevant areas they consider of concern. Such assistance may, inter alia, take the form of joint projects for increasing

the capacity of relevant authorities, including licensing authorities, law enforcement agencies and border control units, as well as awareness-raising;

(xvi) States requesting assistance are encouraged to base such requests on their respective assessments of national needs;

(xvii) States and relevant international, regional and subregional organizations in a position to do so could, upon request, assist in the formulation of national action plans and related concrete project proposals;

(xviii) States and subregional, regional and international organizations are encouraged to explore possible synergies with the WCO SAFE customs capacity building programme in preventing, combating and eradicating illicit brokering in small arms and light weapons;

(xix) States in a position to do so are encouraged to explore with Interpol possibilities for strengthening capacity-building in operationalizing Interpol databases;

Promoting effective reporting

(xx) States are encouraged to report, on a voluntary basis, on their efforts to prevent, combat and eradicate illicit brokering in small arms and light weapons as well as on their actions aimed at enhancing international cooperation for this purpose. Such information could be included under a dedicated heading of their national reports on the implementation of the Programme of Action. In their reporting, States could also identify their needs for international cooperation and assistance for capacity-building on brokering controls and national enforcement;

(xxi) The United Nations Office for Disarmament Affairs could enhance its internet resources to specifically include a section on small arms and light weapons brokering. This section could include relevant United Nations reports, national legislation submitted by States, requests and offers for assistance, lists of national coordinating agencies and points of contact, regional and global instruments and initiatives, as well as information on resources that could be available through international organizations such as WCO and Interpol;

(xxii) States are encouraged to carry out periodic consideration of national reporting on small arms and light weapons brokering, preferably in the framework of meetings to consider the implementation of the Programme of Action, the first possibility being in 2008 at the Biennial Meeting of States;

Enhancing international cooperation in preventing, combating and eradicating illicit brokering of small arms and light weapons in violation of United Nations Security Council arms embargoes and sanctions

(xxiii) States should take immediate steps to effectively implement and enforce within their jurisdiction all arms embargoes and sanctions decided by the United Nations Security Council, in accordance with the Charter of the United Nations, including the imposition of appropriate penalties in national law for the illicit brokering of small arms and light weapons in violation of such arms embargoes;

VI. Procedural matters

64. Acting on a recommendation contained in the Programme of Action, the General Assembly, in its resolution 60/81 decided to establish a group of governmental experts, appointed by the Secretary-General on the basis of equitable geographical representation, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and asked the Secretary-General to submit the report on the outcome of its study to the Assembly at its sixty-second session.

65. Accordingly, on 7 June 2006, the Secretary-General appointed, on the basis of equitable geographical representation, the following governmental experts:

Linval Bailey
Deputy Commissioner of Police
Police Department
Ministry of National Security
Kingston

Daniela Boudinova (first session)
State Expert at NATO and International Security Directorate
Ministry of Foreign Affairs
Sofia

Spencer Chilvers
Head, International Policy Unit
Export Control Organisation
Department for Trade and Industry
London

Peter Elaini Eregae
Coordinator of the Kenya National Focal Point on Small Arms and Light Weapons
Ministry of the Provincial Administration and Internal Security
Office of the President
Nairobi

Saja Sattam Habes Majali (second and third sessions)
Counsellor
Permanent Mission of the Hashemite Republic of Jordan to the United Nations
New York

Erik af Hällström (first session)
Counsellor, Unit for Arms Control
Ministry of Foreign Affairs
Helsinki

Khalil Hashmi (first session)
First Secretary
Permanent Mission of Pakistan to the United Nations
New York

José Leonel Herrera Cruz
Director of Politics
Ministry of Defence
Managua

Emad Hussein
Police Academy, 5th Aggregation
Ministry of Interior
Cairo

Christophe Jacquot
Head of the Section of Sensitive Goods and War Materials
Ministry of Defence
Paris

Kari Kahiluoto (second and third sessions)
Permanent Representative of Finland to the Conference on Disarmament
Geneva

Qazi Khalilullah (second and third sessions)
Director General
Ministry of Foreign Affairs
Islamabad

Jan Arve Knutsen (first and third sessions)
Senior Adviser (Disarmament and Non Proliferation)
Department for Security Policy
Ministry of Foreign Affairs
Oslo

Kwang-chul Lew
Ambassador of the Republic of Korea to the Republic of Azerbaijan
Baku

Song Li (first and third sessions)
Counsellor, Department of Arms Control and Disarmament
Ministry of Foreign Affairs
Beijing

Zhou Long (second session)
Division Director
Department of Arms Control and Disarmament
Ministry of Foreign Affairs
Beijing

María Josefina Martínez Gramuglia (second and third sessions)
First Secretary
Permanent Mission of Argentina to the United Nations
New York

Gabriela Martinic (first session)
Counsellor
Permanent Mission of Argentina to the United Nations
New York

Grigory I. Mashkov
Deputy Director
Department for Disarmament and International Security
Ministry of Foreign Affairs
Moscow

Cláudio Medeiros Leopoldino
Disarmament and Sensitive Technologies Division
Ministry of External Relations
Brasilia

Paul Pasnicu
Director, Conventional Arms Division
National Agency for Export Controls
Ministry of Foreign Affairs
Bucharest

Petio Petev (second and third sessions)
Director of NATO and International Security Directorate
Ministry of Foreign Affairs
Sofia

Stephanie Pico
Small Arms and Light Weapons Policy Advisor
Office of Weapons Removal and Abatement
Bureau of Political-Military Affairs
United States Department of State
Washington, D.C.

Daniël Prins
Deputy Permanent Representative of the Kingdom of the Netherlands
to the Conference on Disarmament
Geneva

Coly Seck
Counsellor
Permanent Mission of the Republic of Senegal to the United Nations
New York

Rima Volf
Chief, International Cooperation Division
Lithuanian Weaponry Fund
Ministry of Defence
Vilnius

Haim Waxman
Director of Export Control Department
Ministry of Foreign Affairs
Jerusalem

David Robin Wensley
Deputy Director, Conventional Arms
Department of Foreign Affairs
Johannesburg

Przemyslaw Wyganowski
Counsellor, Head of European Defence and Security Policy Section
Permanent Representation of the Republic of Poland to the European Union
Brussels

Keiko Yanai
Deputy Director
Non-proliferation, Science and Nuclear Energy Division
Ministry of Foreign Affairs
Tokyo

66. The Group of Experts conducted its work in three sessions of one week duration each. The first session was held in Geneva from 27 November to 1 December 2006. The second and third sessions were convened in New York from 19 to 23 March and from 4 to 8 June 2007, respectively. At its first session, the Group unanimously elected as its Chairperson Daniël Prins.

67. The Group received contributions from a number of independent experts and representatives from international organizations on issues relevant to the illicit brokering in small arms and light weapons in all its aspects. The Group also heard the views of relevant civil society organizations. In all, the Group interacted with the following persons:

Mujahid Alam, Principal Adviser and Coordinator of Heads of Office of the Special Representative of the Secretary-General at the United Nations Organization Mission in the Democratic Republic of the Congo

Jacqueline Arango, Assistant United States Attorney

Ernst Jan Hogendoorn, former Member of the Panel of Experts on Somalia and former Member of the Panel of Experts on the Sudan

Joe Kelly, Deputy Director for Capacity Building Directorate, World Customs Organization

Keith Krause, Programme Director, Small Arms Survey

Klaas Leenman, Account Manager, Strategic Goods and Embargoes, Netherlands Customs Administration

Agnès Marcaillou, Chief, Regional Disarmament Branch, United Nations Office for Disarmament Affairs

Nicholas Marsh, Researcher, International Peace Research Institute, International Action Network on Small Arms

Mark Barnes, World Forum on the Future of Sport Shooting Activities

Michaela Ragg, Assistant Director at the Office of the Special Representative for the International Criminal Police Organization to the United Nations

A Senior Political Affairs Officer and a Political Affairs Officer in the Security Council Subsidiary Organs Branch, Security Council Affairs Division, Department of Political Affairs of the United Nations Secretariat

68. The Group took into account various relevant documents on small arms and light weapons, issued by the United Nations, by regional, subregional and other multilateral organizations, as well as relevant materials issued by civil society organizations and authoritative experts on brokering in small arms and light weapons.

Annex

Existing regional and multilateral instruments and arrangements enhancing international cooperation to prevent, combat and eradicate the illicit brokering in small arms and light weapons

Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD) Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition (adopted in 1998, amended in 2003)

Organization of African Unity Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000)

OSCE Document on Small Arms and Light Weapons (2000)

Southern African Development Community Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region (2001)[a]

United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)

Council of the European Union Joint Action on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons (2002)

Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) (2002)

Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2003)

Council of the European Union Common Position on the control of arms brokering[a] (2003)

OAS/CICAD Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition (2003)

OSCE Handbook of Best Practices on Small Arms and Light Weapons (2003)

Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering (2003)

Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa[a] (2004)

OSCE Principles on the Control of Brokering Small Arms and Light Weapons (2004)

Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005)

[a] Indicates a legally binding instrument.

United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime[a] (2001)

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material (2006)

African Common Position to the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2005)

ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials[a] (2006)

Wassenaar Arrangement Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS) (2003)

APEC Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS) (2004)

OAS Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS) (2004)

OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS) (2004)